



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2003

Mr. John Feldt
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2003-6184

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186953.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for information relating to an assault. You have submitted information that you claim is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.130 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

We first note that the submitted information includes both a statement and an affidavit that the requestor provided to The Colony Police Department (Exhibit C) and documents that the district attorney describes as his entire prosecution file in the case to which the statement and affidavit relate (Exhibit D). The district attorney believes, however, that the documents submitted as Exhibit C are the only information to which the requestor actually seeks access. We note that the request for information explains that although the requestor has obtained other records, "[t]he information that I needed was the actual victim statement in full report [sic] given while I was at the police station." Consequently, we agree that only the statement and affidavit submitted as Exhibit C are responsive to this request for information. Therefore, we need not address the district attorney's claims with regard to the information submitted as Exhibit D. This decision is not applicable to that information, which need not be released..

Next, we address your claim with regard to Exhibit C under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the requested information. See Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the submitted victim’s statement and affidavit relate to a pending criminal prosecution. You state that the release of this information would interfere with the district attorney’s prosecution of the case. Based on your representations, we find that section 552.108(a)(1) is applicable in this instance. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude that you may withhold the victim’s statement and affidavit submitted as Exhibit C under section 552.108 of the Government Code. As we are able to make this determination, we need not address your claim with regard to Exhibit C under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free,

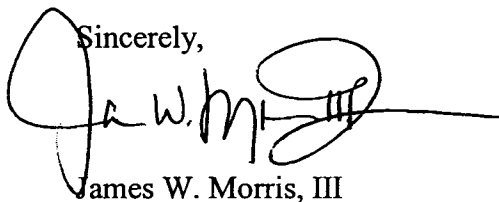
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 186953

Enc: Submitted documents

c: Ms. Donna Willoughby
4265 Ireland
The Colony, Texas 75056
(w/o enclosures)